

**BEFORE THE TRIAL CHAMBER OF THE  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

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**IENG THIRITH DEFENCE RESPONSE TO 'CO-PROSECUTORS' REQUEST FOR AN  
EXTENSION OF TIME AND PAGE LIMIT TO RESPOND TO  
PRELIMINARY OBJECTIONS OF THE ACCUSED'**

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**Defence for Ieng Thirith:**

PHAT Pouy Seang  
Diana ELLIS, QC

**Trial Chamber Judges:**

NIL Nonn, President  
Silvia CARTWRIGHT  
THOU Mony  
Jean-Marc LAVERGNE  
Ya SOKHAN

**Civil Party Co-Lead Lawyers:**

PICH Ang  
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**Co-Prosecutors:**

CHEA Leang  
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## I INTRODUCTION

1. On 1 March 2011 the Co-Prosecutors requested an extension of time and pages to respond to the defence's preliminary objections (**Co-Prosecutors' Request**).<sup>1</sup>
2. The defence for Madame Ieng Thirith (**Accused**) objects to the Request on the following grounds:
  - a. The Co-Prosecutors have failed to show 'exceptional circumstances' necessitating an extension of the page limit, and
  - b. The Co-Prosecutors' Request for an extension of time should be denied as arguments should be presented in summary form.
3. The defence reminds the Trial Chamber that it denied a similar request filed by the defence for the Accused.<sup>2</sup> The defence filed its Preliminary Objections within the time and page limits prescribed by the Trial Chamber and Internal Rules.<sup>3</sup>

## II REQUEST FAILS TO SHOW 'EXCEPTIONAL CIRCUMSTANCES'

4. Article 5.4 of the Practice Direction on Filing of Documents before the ECCC requires the party to show 'exceptional circumstances' in order for the Chamber to allow an extension of the page limit. The defence submits the Co-Prosecutors have failed to satisfy the requirement that 'exceptional circumstances' have been met in the instant case.

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<sup>1</sup> Co-Prosecutors' Request for an Extension of Time and Page Limit to Respond to Preliminary Objections of the Accused, 1 March 2011, Document No. E51/5/1.

<sup>2</sup> TC, Interoffice Memorandum by Susan Lamb, Senior Legal Officer, Trial Chamber, title: Advance notification of Chamber's disposition of Motions E14, E15, E9/2, E9/3, E24 and E27, 3 February 2011, Document No. E35. See also TC, Interoffice Memorandum by Susan Lamb, Senior Legal Officer, Trial Chamber, title: Trial Chamber's amended procedures for the filing of preliminary objections and clarification of envisaged response deadlines, 14 February 2011, Document No. E51.

<sup>3</sup> Ieng Thirith Defence's Preliminary Objections, 14 February 2011, Document No. E44.

5. The defence recalls the 'Co-Prosecutors' Observations on Ieng Thirith's Request for Additional Time and Pages for Preliminary Observations', where the Co-Prosecutors held:<sup>4</sup>

Furthermore, the Defence is incorrect in arguing that the likelihood that complex jurisdictional issues will be raised as preliminary objections constitutes an "exceptional circumstance". The Rules specifically anticipate that parties may raise preliminary objections, including as to the jurisdiction of the Trial Chamber. As a newly constituted court, it is to be expected that jurisdictional issues may arise at the ECCC that are novel and potentially complex. This does not constitute an "exceptional circumstance"; indeed, it is quite an ordinary circumstance and must have been contemplated by the drafters of the ECCC Internal Rules.

6. Accordingly, the defence submits the Co-Prosecutors are estopped from raising this argument now, and the request for extension of page limit should not be granted.
7. In the underlying case, it does not engage the general Internal Rules that provide a deadline, but relates to a specific recent order by the Trial Chamber.<sup>5</sup> The Chamber specifically ordered the Co-Prosecutors to file five pages in response to each party's preliminary objections, or in consolidated form for the parties together. Given that many of the preliminary objections filed by the parties overlap, the defence contends that a consolidated response of 20 pages suffices for the Co-Prosecutors' response. Accordingly, the request for an extension of the page limit should be denied.

### III NO NEED FOR EXTENSION OF PAGE LIMIT AND TIME LIMIT

8. The defence further submits that the Co-Prosecutors' Request should be denied, insofar as it requests an extension of time for filing their response to the Preliminary Objections. Such a request is not warranted by the Internal Rules, and is made redundant by the Trial Chamber's earlier ruling on similar requests by the

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<sup>4</sup> Co-Prosecutors' Observations on Ieng Thirith's Request for Additional Time and Pages for Preliminary Objections, 31 January 2011, Document No. E24/1, para. 5.

<sup>5</sup> TC, Interoffice Memorandum by Susan Lamb, Senior Legal Officer, Trial Chamber, title: Trial Chamber's amended procedures for the filing of preliminary objections and clarification of envisaged response deadlines, 14 February 2011, Document No. E51, p. 2.

defence, where the Trial Chamber ruled that '[t]he Chamber will reject all requests to extend the present deadlines in relation to the filing of materials in preparation for trial', that includes the Preliminary Objections.<sup>6</sup>

9. The defence reiterates the Co-Prosecutors' arguments in the 'Co-Prosecutors' Observations on Ieng Thirith's Request for Additional Time and Pages for Preliminary Objections', where they stated that:<sup>7</sup>

Both Co-Lawyers for the Defence have been involved with the case since November 2007 and thus have had over 3 years to consider and develop potential preliminary objections. [...] As diligent advocates, the Defence surely has spent a significant amount of time researching and developing potential preliminary objections over the last few years.

10. If the defence should have been prepared for the preliminary objections, this observation would apply even more to the Co-Prosecutors, who have been informed of the defence's jurisdictional arguments throughout the various stages of the proceedings. The content of the defence's preliminary objections can hardly come as a surprise to the Co-Prosecutors. On previous occasions the Co-Prosecutors have responded to the defence's jurisdictional arguments, and it would suffice for the Co-Prosecutors to simply refer to their arguments filed at earlier occasions in response to defence jurisdictional arguments.

11. The defence's Preliminary Objections,<sup>8</sup> as directed by the Trial Chamber's Memorandum,<sup>9</sup> consist of summary arguments and refer to arguments previously filed by the defence for the Accused. It would similarly suffice for the Co-Prosecutors' response to 'present arguments in summary form',<sup>10</sup> by referring to

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<sup>6</sup> TC, Interoffice Memorandum by Susan Lamb, Senior Legal Officer, Trial Chamber, title: Advance notification of Chamber's disposition of Motions E14, E15, E9/2, E9/3, E24 and E27, 3 February 2011, Document No. E35, p. 2.

<sup>7</sup> Co-Prosecutors' Observations on Ieng Thirith's Request for Additional Time and Pages for Preliminary Objections, 31 January 2011, Document No. E24/1, para. 5.

<sup>8</sup> Ieng Thirith Defence's Preliminary Objections, 14 February 2011, Document No. E44.


<sup>9</sup> TC, Interoffice Memorandum by Susan Lamb, Senior Legal Officer, Trial Chamber, title: Advance notification of Chamber's disposition of Motions E14, E15, E9/2, E9/3, E24 and E27, 3 February 2011, Document No. E35.

<sup>10</sup> *Ibid.*, p. 2.

responses filed on earlier occasions to jurisdictional arguments raised by the defence for the Accused. The Trial Chamber indeed directed the parties to do so.<sup>11</sup>

#### IV CONCLUSION

12. For the foregoing reasons, the defence requests the Trial Chamber to deny the Co-Prosecutors' Request for an extension of page and time limits.

Party	Date	Name Lawyers	Place	Signature
Co-Lawyers for Ieng Thirith	2 March 2011	PHAT Pou Seang Diana ELLIS, QC	Phnom Penh	 P.P

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<sup>11</sup> *Ibid.*